

**BOARD OF ZONING APPEALS**  
**January 30, 2009**

**A. Roll Call**

Present:

Mr. Mark Wenger  
Mr. Marvin Rhodes  
Ms. Barbara Moody  
Mr. William Watkins  
Mr. Jack Fraley

Others Present:

Mr. Adam Kinsman, Deputy County Attorney  
Ms. Melissa Brown, Deputy Zoning Administrator  
Ms. Jennifer VanDyke, Administrative Services Coordinator

**B. Minutes**

**C. Old Business**

**D. New Business**

**Discussion of Current Legal Matters**

Mr. Wenger opened the public hearing.

Upon seeing no public comment the public hearing was closed.

Mr. Fraley stated that the board had been without counsel regarding legal matters related to the case number ZA-0008-2008.

Mr. Fraley stated that under Virginia Code Section 15.2 2308(d) the board may employ or contract legal counsel within the limits of funds appropriated by the governing body.

Mr. Fraley stated that Mr. John Tarley of the law firm Spurn, Tarley, Robinson, and Tarley has agreed to provide legal counsel to the Board regarding legal matters during this meeting on a pro-bono basis. Mr. Fraley made a motion to employ Mr. Tarley for legal consultation pertaining to litigation that has been filed against the Board.

Ms. Moody seconded the motion made by Mr. Fraley.

The motion was passed unanimously by voice vote.

Mr. Fraley stated that pursuant to Virginia Code Section 2.2-3711(A)(7), *Consultation with Legal Counsel*, a public body may hold closed meetings for the purpose of consultation with legal counsel, by briefings by staff members, or consultants pertaining to actual or probable litigation where such consultation or briefing in open meeting would adversely affect negotiating or litigating position of the public body and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of the legal advice by such counsel. Mr. Fraley made a motion to recess in a closed session for the purpose of consultation with legal counsel pertaining to litigation that has been filed against the board referencing ZA-0008-2008. Mr. Watkins seconded the motion.

The motion was passed unanimously by voice vote (5-0).

After going into closed session the Board reconvened at 6:57pm.

Mr. Wenger requested Ms. Brown read the resolution.

Ms. Brown stated now, therefore be it resolved that the Board of Zoning Appeals of James City County, Virginia, hereby certifies that, to the best of each member's knowledge; (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies; and (ii) only such public business matters were heard, discussed, or considered by the Board as were identified in the motion, made pursuant to Section 2.2-3711 (A)(7), to receive legal counsel.

Mr. Fraley seconded the motion.

The motion was passed unanimously by voice vote (5-0).

Mr. Fraley stated that under Virginia Code Section 2.22308(D) the Board may employ or contract legal counsel within the limits of funds appropriated by the governing body. Mr. Fraley made a motion to request the Board of Supervisors provide legal counsel or funding as may be required to represent the Board of Zoning Appeals for legal action related to the pending cases filed against the board by Cingular Wireless, Verizon Wireless, Busch Properties, Kingsmill Community Services Association and James City County. Further the Board of Supervisors acts forthwith on this request in order that the Board of Zoning Appeals has the time to prepare its legal defense meet all legal deadlines and see the case through to judicial decision. Ms. Moody seconded the motion.

The motion was passed unanimously by voice vote (5-0).

Mr. Fraley made a motion to appoint Mr. Marvin Rhodes and Mr. Jack Fraley to a search committee for the purpose of searching for and recommending to the Board of Zoning Appeals outside counsel to represent the Board within the limits of funds appropriated by the governing body pertaining to litigation

filed against the Board of Zoning Appeals by Cingular Wireless, Verizon Wireless, Busch Properties, Kingsmill Community Services Association and James City County.

Mr. Watkins seconded the motion.

The motion was passed unanimously by voice vote (5-0).

Mr. Fraley stated he wondered if the Board should consider scheduling a series of public meetings to discuss the proposed cell towers. Mr. Fraley asked Ms. Brown to clarify what notification is required to organize a public hearing as well as the notification required to cancel a public meeting if it is no longer necessary.

Ms. Brown stated that staff would put out a public announcement stating that the meeting had been cancelled and post notice on the door of the meeting's location.

Mr. Fraley stated that under the bylaws the Board has its regularly scheduled meeting on the first Thursday of each month. Scheduling a Special Meeting requires a request of either the chair or two members of the Board of Supervisors. Mr. Fraley stated that this notification must then go to the Secretary of the Board. Notification of the public meeting must be posted five days in advance of the meeting.

Ms. Brown stated that staff could work out a schedule of special meeting dates and Board members could adopt them at the next regularly scheduled meeting of the Board of Zoning Appeals.

Mr. Rhodes asked if there is a minimum time requirement to cancel special meetings.

Ms. Brown stated that there is not.

Ms. Moody asked if cancelation notification could be posted on Channel 48.

Ms. Brown stated that they could request this notification but, it is not a requirement and, it is not usually done for other special meetings. This notification would also depend upon the time given to communications staff to get the material on the channel.

Mr. Fraley stated that he felt that scheduling the public meetings is important. Especially in the event that the local governing body decides to respond to the request of funds favorably then a need to report back as to recommendations to the full board on counsel. Mr. Fraley stated that there would be a need for further closed session meetings to consider the on-going litigation matters.

Mr. Rhodes asked if Mr. Fraley had a specific number in mind regarding the requested public meetings.

Mr. Fraley stated that he recommends the chairman consulting with the Secretary. The Chairman and the Secretary should decide on a proposal to bring forward to the full committee at the next regularly scheduled meeting.

Mr. Fraley suggested another public comment period be provided prior to adjournment.

Mr. Wenger opened the public comment.

Ms. Ina Friedman of 213 Francis Thacker spoke. Ms. Friedman thanked the Board on their vote and, complimented the members in the way they conducted themselves. Ms. Friedman stated that she thought it is a disgrace what the County is doing. Ms. Friedman stated that she appreciated the time the members had taken to familiarize themselves with all the materials related to the case. Ms. Friedman stated that the questions the Board members had made were reflective of the time taken by them.

Mr. David Neiman of 105 Broomfield Circle spoke. Mr. Neiman stated that he would like to second what Ms. Friedman said. Mr. Neiman stated that he appreciated the way the Board members conducted themselves.

Mr. Wenger closed the public hearing.

#### **F. Adjournment**

Mr. Rhodes motioned to adjourn, Mr. Fraley seconded the motion.

Mr. Wenger adjourned the meeting at 7:40 pm.

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Mark Wenger  
Chairman

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Melissa C. Brown  
Secretary